

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA

v.

GARY L. VARNEY

CASE NO.

1:09CR---16

PLEA AGREEMENT

Webster, J.

The defendant, **GARY L. VARNEY**, and his attorney, Patrick J. Hanley, Esq., agree with the United States as follows:

RIGHTS OF THE DEFENDANT

1. The defendant understands his rights:
 - a. to be charged by way of an Indictment returned by a Federal Grand Jury;
 - b. to plead not guilty;
 - c. to have a trial by jury;
 - d. to confront and cross-examine witnesses and to call witnesses in his defense;
 - e. against compelled self incrimination; and
 - f. to have at least thirty (30) days after appearance with counsel to prepare for trial.

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WEST DIVISION
02 FEB 18 AM 7:46

FILED
JAMES BONINI
CLERK

WAIVER OF RIGHTS AND PLEA OF GUILTY

2. The defendant waives these rights and pleads guilty to Count 1 of the Information filed herein, charging him with a violation of 18 U.S.C. § 1344 (Bank Fraud).

MAXIMUM PENALTY

3. The maximum penalties for this offense is as follows:
- a. imprisonment for a period of up to 30 years, a fine not to exceed the greater of \$1,000,000, or twice the gain to the defendant or loss to the victim of the offense, and a mandatory term of supervised release of not more than 5 years;
 - b. additional imprisonment for part or all of the term of supervised release if the defendant violates the conditions of supervised release;
 - c. a mandatory special assessment of \$100.00 due prior to the date of sentencing, payable to Clerk of Courts, U.S. District Court, Southern District of Ohio; and
 - d. mandatory restitution (if applicable) pursuant to 18 U.S.C. § 3663A(C)(1), the Mandatory Restitution Act of 1996, the amount of which defendant understands may include defendant's total offense conduct and is not limited to the restitution attributable to the count(s) of conviction, pursuant to 18 U.S.C. § 3663(a)(3).

SENTENCING

4. The sentence in this case will be imposed by the Court. There is no agreement as to what that sentence will be. The defendant understands that the Court could impose the statutory maximum sentence as stated in paragraph 3 above. The defendant understands that the United States Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines") are advisory and not mandatory, although the Court is required to consider the Sentencing Guidelines and their application to this case in imposing sentence. Sentencing is within the discretion of the Court, and the defendant understands that the Court may or may not choose to impose sentence based on the applicable sentencing range under the Sentencing Guidelines for the offense charged in the

Information. The defendant has thoroughly reviewed with his attorney how the Sentencing Guidelines might apply to this case. The defendant understands that he does not have the right to withdraw his guilty plea if the Court chooses to apply the Sentencing Guidelines including upward departures or otherwise imposes a sentence that is higher than expected.

AGREEMENT OF THE UNITED STATES

5. The United States agrees as follows:

- a. In consideration of the defendant's agreement to plead guilty to the Information filed herein, the United States Attorney for the Southern District of Ohio will not further prosecute the defendant for any conduct prior to the date of this Plea Agreement that was part of the same course of criminal conduct as the matters described in the Information;
- b. In consideration of the defendant's timely and truthful admission of the conduct charged in the Information to which he pleads guilty, the United States Attorney for the Southern District of Ohio recommends that the defendant's offense level be reduced by two levels for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a); and
- c. If the defendant's offense level is 16 or greater before the two-level reduction under U.S.S.G. § 3E1.1(a) above, the United States agrees that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the United States to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently, and therefore the United States hereby moves the Court to find that the defendant qualifies for an additional one-level reduction pursuant to U.S.S.G. § 3E1.1(b).

6. The agreement stated in paragraph 5, above, is limited to the United States Attorney's Office for the Southern District of Ohio and does not bind any other federal, state or local prosecuting authorities.

7. The defendant understands that he has the right to appeal the sentence imposed in this case pursuant to 18 U.S.C. § 3742. In exchange for the agreement of the United States as set forth in paragraph 5 above, the defendant hereby waives all rights to appeal the sentence imposed, any aspect of the sentence imposed, or the manner in which the sentence was imposed (including whether or not the sentence was imposed pursuant to the Sentencing Guidelines and including whether or not the Sentencing Guidelines were correctly applied), unless the sentence exceeds the maximum permitted by statute. The defendant further understands that the United States reserves its right to appeal the sentence imposed as set forth in 18 U.S.C. § 3742(b). However, if the United States appeals the defendant's sentence, then the defendant shall be released from the above waiver of appellate rights.

STATEMENT OF FACTS

8. The Statement of Facts in this case is true and correct and will be submitted to the Court as evidence.

SENTENCING GUIDELINES STIPULATIONS

9. The United States and the defendant agree and recommend to the Court that the Court apply the Sentencing Guidelines in imposing sentence in this case, and further agree and stipulate as follows:

- a. that the Sentencing Guideline applicable to the offense of Bank Fraud, 18 U.S.C. § 1344, is U.S.S.G. § 2B1.2 (Nov. 2008);
- b. that pursuant to U.S.S.G. § 2B1.1(a)(1), the base offense level is 7;

- c. that pursuant to U.S.S.G. § 2B1.1(b)(1)(I), the base offense level is increased by 16 levels to an offense level of 23 because the loss involved in the offense was more than \$1,000,000 but not more than \$2,500,000;
- d. that pursuant to U.S.S.G. § 2B1.1(b)(13)(A), the offense level is increased by two levels to an offense level of 25 because the defendant derived more than \$1,000,000 in gross receipts from a financial institution as a result of the offense;
- e. that pursuant to U.S.S.G. § 3E1.1(a) and (b), the defendant qualifies for a reduction in his offense level based on acceptance of responsibility as set forth in paragraph 5, above;
- f. that no determination of any of the factors in U.S.S.G. Chapter 4 regarding criminal history has been made; and
- g. that the defendant will argue for a downward variance from the stipulated guidelines range based on the following sentencing factors: the defendant's health, the defendant's good character, and restitution, pursuant to 18 U.S.C. § 3553(a). The government will take no position on a variance from the stipulated guidelines range related to these particular factors.

10. The stipulations in paragraph 9, above, are not binding on the Court, and the defendant understands that if the Court rejects any of the stipulations, he does not have the right to withdraw his guilty plea.

11. The parties agree that Fifth Third Bank, the victim herein, has entered into a settlement agreement with the defendant in full settlement of its losses arising out of the facts charged in the Information herein.

REPRESENTATION OF COUNSEL

12. The defendant has thoroughly reviewed all aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The defendant has

received meaningful and satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement, each of his rights affected by this Plea Agreement and the alternatives available to him other than entering into this Plea Agreement. After conferring with counsel, the defendant has concluded that it is in his strategic best interest to enter into this Plea Agreement in its entirety, rather than to proceed to trial in this case.

VOLUNTARY PLEA

13. This plea of guilty is freely and voluntarily made and not the result of force or threats or of promises apart from those set forth in this Plea Agreement. There have been no representations or promises from anyone as to what sentence this Court will impose.

VIOLATION OF PLEA AGREEMENT


14. The defendant understands and agrees that if he violates any provision of this Plea Agreement, the United States may declare this Plea Agreement null and void, and the defendant thereafter will be subject to prosecution for any criminal violation including, but not limited to, any crime(s) or offense(s) contained in or related to the Information filed in this case, as well as perjury and obstruction of justice.

ENTIRETY OF AGREEMENT

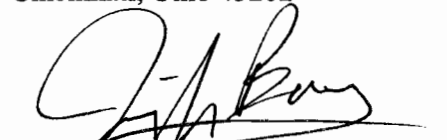
15. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties.

GREGORY G. LOCKHART
United States Attorney

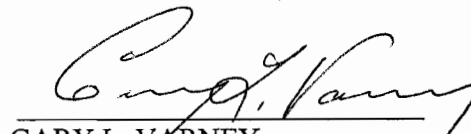
2/12/09
Date


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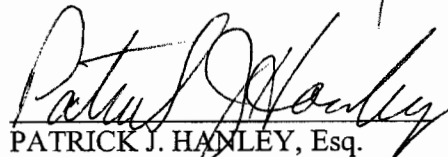
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Date


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2/5/09
Date


GARY L. VARNEY
Defendant

2-5-09
Date


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